



Contaminants

The Questions:

(1) Do we have any requirements for grantees to test land for contaminants prior to a purchase assisted with WSFR funds?

A: I did not find an explicit directive for those administering federal funds on land acquisition projects to test for contaminants (or to direct anyone else to) on the newly acquired property. Outside of those cases where Phase 1 ESA or other are required, additional guidance is scant.

(2) After a transfer of property to new ownership, who is responsible for cleanup of unanticipated contaminants that are found and were left by the previous owners?

A: CERCLA states that a Removal Action or Remedial Action costs are incurred by Potentially Responsible Parties (PRPs). PRPs are persons that:

- i. Own and operate a facility
- ii. Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such substances were disposed.
- iii. Any person who by contract, agreement, or otherwise arranged for the transport of hazardous substances owned or possessed by such person to another's vessel or facility.
- iv. Any person who accepts or has accepted any hazardous substance for transport once such hazardous substance causes the incurrence of response costs.

- 'person' is defined as any 'individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state municipality, commission, political subdivision of a state, or interstate body'

*Additionally, most court cases have applied responsibility retroactively to previous owners of property, even in cases where contaminant dumping was legal at the time of release, but is considered illegal now.

*Per the 2002 Brownfields Amendments to the Superfund Act, the government established liability protections for those persons who own contaminated land who meet one or more of the following criteria-

- I. Bona fide prospective purchasers (BFPPs)
- II. Contiguous property owners (CPOs), or
- III. Innocent landowners (ILOs)

of financial responsibility for such facility under subsection (b) of this section, if the person liable under section 9607 of this title is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 9607 of this title who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 9607 of this title if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

For the purposes of this section, guarantor is defined as:

'any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.'

-42 USC part 9601